APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,931	12/15/2003	Steven Tischer	030515 (BLL-0144)	3718

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EXAMINER
HAILE, AWET A

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
 after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
 earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
     closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-15 and 17-21* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-15 and 17-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   Claims 1-4, 6-15 and 17 –21 are rejected by the same ground of rejections

Claim Rejections – 35 USC§ 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under

35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or
         nonobviousness.

4.   Claims 1 – 4, 6, 9-15, 19 - 21 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Bianchi (2004/0059921 A1) in view of Labaton et al (5742684)

For claims 1-4, 6, 9-15 and 19 - 21 Bianchi discloses a method for transmitting data over

a computer network to a predetermined recipient (see figure 17), the method comprising:

modifying at least one data byte in a first data message based on a first message

modification key value to obtain a modified first data message (see paragraph 126, lines,

4-6), modifying at least one data byte in a second data message based on a second

modification key value to obtain a modified second data message, transmitting the first

and second modified data messages to a first device: determining the first data message in

the first device for the predetermined recipient based on the modified first data message

and the first message modification key value(see figure 17): and determining the second

data message in the first device for the predetermined recipient based on the modified

second data message and the second message modification key value(see paragraph 129

lines 1-9) as recited in claim 1 and 11. The first data message comprises voice data (see

paragraph 19 lines 3 –4) as recited in claims 9 and 19. The first data message comprises

video data (see paragraph 19 lines 3 –4) as recited in claims 10 and 20. A second device

configured to receive the transmitted first and second modified data messages and to

determine the first data message for the predetermined recipient based on the modified

first data message and the first message modification key value, the second device further

configured to determine the second data message for the predetermined recipient based

on the modified second data message and the second message modification key value

(see paragraph 129 lines1-12) as recited in claim 11. Wherein the first and second

devices comprise first and second computers, respectively, operatively communicating

with one another (see figure 15) as recited in claim 12.

However Bianchi fails to teach the modification key value being determined on a variable parameter; wherein the modifying at least one byte of the first data message includes adding the first message modification key byte value to multiple data bytes of the first data message as recited in claims 1,11 and 21 the variable parameter comprises a time varying parameter as recited in claims 2 and 13, time- varying parameter includes at least one of a determined hour, minute and second as recited in claims 3 and 14, first message modification key being determined based on at lease one variable parameter and a unique identifier as recited in claim 4 and 15. The method of transmitting the modification key values to a first computer as recited in claim 6

Labaton et al from the same field of endeavor teach the first and second message modification key value being determined based on at least one variable parameter (see column 6, lines 34-40): wherein the modifying at least one byte of the first data message includes adding the first message modification key byte value to multiple data bytes of the first data message (see column 9, lines 1- 41, also see column 6, lines 63- 66). The variable parameter comprises a time-varying parameter (see column 5, lines 10 – 14). The time-varying parameter includes at least one of a determined hour, minute, and second (see column 3 lines 57 – 64). The first message modification key value being determined based on at the least one variable parameter and a unique identifier associated with the predetermined recipient (see column 5 lines 10 – 19). Transmitting the first and second message modification key values to a first computer (see column 6, lines 35 –36)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to incorporate the method/system of using the time varying

parameter to determine the modification key value and then adding the modification key

value to the data message as taught by Labaton et al in to the Smart IP phones network

device 80 of Bianchi the motivation for doing this is to prevent unauthorized use of the

data message after a preset threshold time.

5.   Claims 7, 8, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Bianchi and Labaton et al as applied to claim 1 and 11 above, and further in view of

Kamperman et al (2002/0004903 A1)

Bianchi and Labaton et al discloses all the subject matter with the exception of, the

method transmitting the first and second modified data messages via first communication

channel as recited in claims 7 and 17, the first and second message modification key

values are both transmitted via a second communication channel as recited in claim 8 and

18.

Kamperman et al from the same field of endeavor teaches the method/system wherein the

first and second modified data messages are both transmitted via a first communication

channel. The first and second message modification key values are both transmitted via a

second communication channel (see paragraph 009, lines 27-30)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method/system of transmitting the data message and the decryption key using separate channels as taught by Kamperman in to the modified Smart IP phone the motivation for doing this is to prevent eavesdrop to the transmitting message.

Response to Argument

6.   Applicant's arguments filed on 10/09/2007 have been fully considered but they are not persuasive.

Regarding claims 1-4, 6-15 and 17-21, the applicant argued that "…. Labaton fails to teach "adding the first message modification key byte value to multiple data bytes of the first data message.." in page 6, paragraph 4,   "…. Labaton makes no reference to adding of byte values, but rather teaches using natural logarithm functions to perform the encryption and decryption …" in page 6 paragraph 5 and "….even if Bianchi and Labaton are combined, the feature of claim 1 do not result" page 6, paragraph 5.

In response to applicant's argument the examiner respectfully disagree with the argument above.

Labaton et al teaches the first and second message modification key value being determined based on at least one variable parameter (see column 6, lines 34-40): wherein the modifying at least one byte of the first data message includes adding the first message

modification key byte value to multiple data bytes of the first data message (see column
9, lines 1- 41, also see column 6, lines 63- 66).

Note that, Labaton et al teaches the data need to be transmitted being encrypted using
GMT (see column 6, line 63), Labaton et al further teaches updating the encryption key
every second or minutes, which adds the current GMT time to multiple data bytes
transmitted within a minute or second. Thus, Labaton et al still discloses the applicant
argued limitations.

In response to applicant's arguments against the references individually, one cannot show
nonobviousness by attacking references individually where the rejections are based on
combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA
1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that "…. even if Bianchi and Labaton are combined,
the feature of claim 1 do not result", the test for obviousness is not whether the features
of a secondary reference may be bodily incorporated into the structure of the primary
reference; nor is it that the claimed invention must be expressly suggested in any one or
all of the references. Rather, the test is what the combined teachings of the references
would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413,
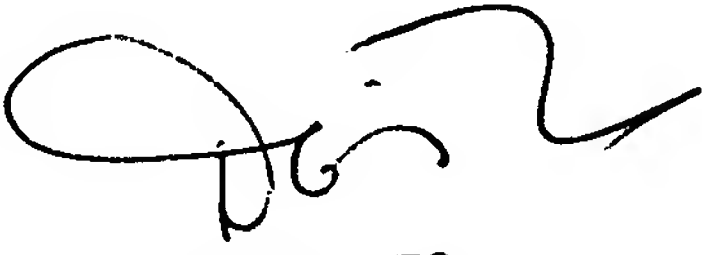208 USPQ 871 (CCPA 1981).

Conclusion

7.   **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Awet Haile whose telephone number is (571) 270-3114.

The examiner can normally be reached on Monday - Thursday 10:00 AM – 5:00 PM

EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Customer Service Representative or access to the automated information system, Call

800 –786-9199(IN USA OR CANADA) or 571-272-1000.

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TECHNOLOGY CENTER 2600